

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DUANE L. BERRY,

Plaintiff,

Case No. 1:22-cv-1118

v.

Hon. Hala Y. Jarbou

UNKNOWN PART(Y)IES #1, et al.,

Defendants.

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**ORDER**

On December 9, 2022, the magistrate judge issued a Report and Recommendation (R&R) (ECF No. 6), recommending that the Court dismiss Plaintiff's complaint for lack of subject matter jurisdiction because it is devoid of merit. Before the Court is Plaintiff's objection to the R&R (ECF No. 7).

Under Rule 72 of the Federal Rules of Civil Procedure,

the district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

Fed. R. Civ. P. 72(b)(3).

Plaintiff's only objection is that he did not consent to "have a magistrate preside over this case under 28usc636." (Pl.'s Obj., PageID.24.) However, the Court referred the case to the magistrate judge under 28 U.S.C. § 636(b)(1), which does not require Plaintiff's consent. That section allows the Court to "designate a magistrate judge to hear and determine any pretrial matter pending before the court," excluding certain dispositive motions. 28 U.S.C. § 636(b)(1)(A). It also allows the Court to "designate a magistrate judge to conduct hearings, including evidentiary

hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A) . . . .” 28 U.S.C. § 636(b)(1)(B). Thus, it gives the magistrate judge the authority to make recommendations for dismissal of an action, which is what the magistrate judge did here. And ultimately, the Court must decide whether to accept that recommendation and adopt it as its own.

Upon review, the Court concludes that the R&R makes a sound recommendation.

Accordingly,

**IT IS ORDERED** that Plaintiff’s objection (ECF No. 7) to the R&R is **OVERRULED**.

**IT IS FURTHER ORDERED** that the R&R (ECF No. 6) is **APPROVED** and **ADOPTED** as the opinion of the Court.

A judgment will enter in accordance with this Order.

Dated: December 21, 2022

/s/ Hala Y. Jarbou

HALA Y. JARBOU

CHIEF UNITED STATES DISTRICT JUDGE